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**IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
FIRST JUDICIAL DISTRICT AT KETCHIKAN**

STATE OF ALASKA,

Plaintiff,

v.

COLETON CHASE HAYWARD,

Defendant.

Case No. 1KE-25-00199CR

**BRIEF OF *AMICUS CURIAE* NATIVE AMERICAN RIGHTS FUND IN  
SUPPORT OF NEITHER PARTY**

VRA CERTIFICATION. Pursuant to Alaska Rule of Criminal Procedure 44(f), undersigned counsel certifies that this document and its attachments do not contain (1) the name of a victim of a sexual offense listed in Alaska Statute § 12.61.140 or (2) a residence or building address or telephone number of a victim of or witness to any crime unless it is an address used to identify the place of a crime or it is an address or telephone number in a transcript of a court proceeding and disclosure of the information was ordered by the court.

On January 10, 2026, this Court entered an order inviting the Metlakatla Indian Community (“Metlakatla”), the Native American Rights Fund (“NARF”), and the Alaska Native Justice Center to provide their perspectives on two questions raised by the Court

Brief of *Amicus Curiae* Native American Rights Fund in Support of Neither Party  
*State of Alaska v. Coleton Chase Hayward*

Case No. 1KE-25-00199CR

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regarding Metlakatla’s sovereign immunity:

1. Did Metlakatla’s sovereign immunity bar the State of Alaska’s (“the State”) search and seizure of Tribal records in 2025?
2. If Metlakatla’s sovereign immunity did bar the search and seizure, does that require the exclusion of that evidence in this case?

NARF submits this *amicus curiae* brief in support of neither party to address the first question in part. Since NARF does not represent the State, Mr. Hayward, or Metlakatla, this brief provides only a survey of the state of the law on the issue raised in the Court’s first question and does not apply that law to the facts and circumstances of this case. Accordingly, NARF has reframed the Court’s question as: Does Tribal sovereign immunity protect Tribal Nations<sup>1</sup> from state court-issued search warrants?

### SUMMARY OF ARGUMENT

Tribal sovereign immunity protects Tribal Nations from state court-issued search warrants, absent a Tribal Nation expressly and unequivocally waiving its immunity or Congress unequivocally abrogating it. Public Law 280<sup>2</sup> does not grant states jurisdiction to issue or execute search warrants against Tribal Nations, nor does it abrogate Tribal Nations’ sovereign immunity to state court-issued search warrants. While Tribal Nations

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<sup>1</sup> This brief uses the term “Tribal Nation” to refer to all federally recognized Indian Tribes, including those in Alaska. *See John v. Baker*, 982 P.2d 738 (Alaska 1999); Wambdi A. Was’tewinyan, *The Capitalization of “Tribal Nations” and the Decolonization of Citation, Nomenclature, and Terminology in the United States*, 49 Mitchell Hamline L. Rev. 623 (2023). For clarity, the terms used in quotes to refer to Tribal Nations have not been altered.

<sup>2</sup> Pub. L. No. 83-280, §§ 2, 4, 67 Stat. 588, 588-89 (1953) (codified as amended at 18 U.S.C. § 1162; 28 U.S.C. § 1360).

can waive their sovereign immunity by consenting to a search or voluntarily providing records, any waiver must comply with Tribal law, be made by a Tribal official or body with the authority to waive immunity, and be narrowly construed. While the Alaska Supreme Court has not addressed the precise issue raised in this Court’s January 10 order, several federal courts have analyzed Tribal Nations’ sovereign immunity against state court-issued search warrants and third-party subpoenas. Because Alaska courts follow the guidance of federal courts and, in particular, the Ninth Circuit on federal law issues such as Tribal sovereign immunity, this brief relies heavily on Ninth Circuit case law.

## ARGUMENT

### **I. Tribal Sovereign Immunity is a Matter of Federal Law and Not Subject to Diminution by the State**

“Under the doctrine of tribal sovereign immunity, an Indian tribe is immune from suit unless Congress has authorized the suit or the tribe has waived its immunity.”<sup>3</sup> This immunity is one of “the core aspects of sovereignty that tribes possess[.]”<sup>4</sup> The Alaska Supreme Court has repeatedly “held that federally recognized tribes in Alaska are sovereign entities entitled to tribal sovereign immunity in Alaska state court.”<sup>5</sup> Tribal

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<sup>3</sup> *Douglas Indian Ass’n v. Cent. Council of Tlingit & Haida Indian Tribes of Alaska*, 403 P.3d 1172, 1176 (Alaska 2017) (citing *Kiowa Tribe of Okla. v. Mfg. Techs., Inc.*, 523 U.S. 751, 754 (1988)).

<sup>4</sup> *Michigan v. Bay Mills Indian Cmty.*, 572 U.S. 782, 788 (2014).

<sup>5</sup> *Douglas*, 503 P.3d at 1176 (citing *Atkinson v. Haldane*, 569 P.2d 151, 162-63 (Alaska 1977)).

Nations’ “sovereign immunity ‘extends to agencies and subdivisions of the tribe,’”<sup>6</sup> entities that operate as arms of Tribal Nations,<sup>7</sup> and, in some cases, Tribal officials acting within their official capacities.<sup>8</sup>

Tribal sovereign “immunity ‘is a matter of federal law and is not subject to diminution by the States[.]’”<sup>9</sup> Therefore, “Alaska law does not have the power to abrogate tribal immunity.”<sup>10</sup> The Alaska Supreme Court has held that “tribal sovereign immunity serves as a jurisdictional bar under federal law[.]”<sup>11</sup> Accordingly, when a “tribe is entitled to [sovereign] immunity, [Alaska] courts ‘*may not exercise jurisdiction.*’”<sup>12</sup>

Since Tribal sovereign immunity is a matter of federal law, Alaska courts take guidance from federal courts and, in particular, the Ninth Circuit when addressing these issues.<sup>13</sup> In relying on federal court decisions, the Alaska Supreme Court has emphasized

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<sup>6</sup> *Barron v. Alaska Native Tribal Health Consortium*, 373 F. Supp. 3d 1232, 1239 (D. Alaska 2019) (quoting *Marceau v. Blackfeet Hous. Auth.*, 455 F.3d 974, 978 (9th Cir. 2006)) (quotation marks omitted).

<sup>7</sup> *See Ito v. Copper River Native Ass’n*, 547 P.3d 1003, 1022 (Alaska 2024).

<sup>8</sup> *See Douglas*, 403 P.3d at 1180-82.

<sup>9</sup> *Ito*, 547 P.3d at 1022 (quoting *Bay Mills*, 572 U.S. at 789).

<sup>10</sup> *Id.*

<sup>11</sup> *Douglas*, 403 P.3d at 1178-79.

<sup>12</sup> *Id.* at 1178 (quoting *Puyallup Tribe, Inc. v. Dep’t of Game of State of Wash.*, 433 U.S. 165, 172 (1977)) (emphasis in original).

<sup>13</sup> *See Douglas*, 403 P.3d at 1178-79 (“We instead take guidance from federal law and the Ninth Circuit[] . . . . [W]e follow the Ninth Circuit in concluding . . . .” (citations omitted)); *Ito*, 547 P.3d at 1022 (“Taking guidance from federal law, we conclude, like the Fourth,

“the benefits of ‘consistency between Alaska and federal law.’”<sup>14</sup>

## **II. Tribal Sovereign Immunity Protects Tribal Nations from State Court-Issued Search Warrants**

Federal courts have consistently held that sovereign immunity protects Tribal Nations from state court-issued search warrants and third-party subpoenas, absent a waiver or congressional abrogation. Tribal sovereign immunity is rooted in federal policies of “tribal self-governance, self-sufficiency, and cultural autonomy.”<sup>15</sup> Sovereign immunity protects Tribal Nations from unconsented-to court processes that strain Tribal resources and interfere with internal Tribal affairs and self-government.<sup>16</sup> The policies underlying Tribal Nations’ sovereign immunity from lawsuits apply equally to other court processes that infringe on Tribal Nations’ self-governance and internal operations, such as third-party

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Ninth and Tenth Circuits, along with many state courts, . . .”).

<sup>14</sup> *Ito*, 547 P.3d at 1019 (quoting *Buntin v. Schlumberger Tech. Corp.*, 487 P.3d 595, 606 (Alaska 2021)).

<sup>15</sup> *Id.* at 1022 (footnote omitted).

<sup>16</sup> *See Douglas*, 403 P.3d at 1179 (quoting *Runyon ex rel. B.R. v. Ass’n of Vill. Council Presidents*, 84 P.3d 437, 440 (Alaska 2004)) (“[W]e are mindful of the concerns . . . that even limited discovery could be financially ruinous for many tribes . . . as funds are shifted from critical programs and rural village economies to urban lawyers in Anchorage, Fairbanks, or Juneau. We find the latter considering more compelling given that ‘protecting tribal assets has long been held crucial to the advancement of the federal policies advanced by immunity.’” (quotation marks omitted)); *Bishop Paiute Tribe v. Cnty. of Inyo* (“*Bishop Paiute*”), 291 F.3d 549, 558 (9th Cir. 2002), *rev’d on other grounds sub nom., Inyo Cnty. v. Bishop-Shoshone Indians of Bishop Cmty. of Bishop Colony* (“*Bishop Paiute III*”), 538 U.S. 701 (2003) (citing *New Mexico v. Mescalero Apache Tribe*, 462 U.S. 324, 334 (1983)) (“Moreover, at issue is not just the Tribe’s right to protect the confidentiality of its employee records, but the more fundamental right of the Tribe not to have its policies undermined by the states and their political subdivisions.”).

subpoenas and search warrants.

In *Alltel Communications, LLC v. DeJordy*, the United States Court of Appeals for the Eighth Circuit observed that third-party subpoenas issued against a Tribal Nation “command a government unit to appear in a federal court and obey whatever judicial discovery commands may be forthcoming. The potential for severe interference with government functions is apparent.”<sup>17</sup> Accordingly, the court held “that a federal court’s third-party subpoena in private civil litigation is a ‘suit’ that is subject to Indian tribal immunity.”<sup>18</sup> The Eighth Circuit held that third-party subpoenas “threaten[] to contravene ‘federal policies of tribal self determination, economic development, and cultural autonomy’ that underlie the federal doctrine of tribal immunity.”<sup>19</sup>

Likewise, in *Bonnet v. Harvest (U.S.) Holdings, Inc.*, the United States Court of Appeals for the Tenth Circuit concluded that a “‘suit’ includes ‘judicial process[.]’”<sup>20</sup> Accordingly, the court held that a third-party subpoena “served directly on the Tribe, regardless of whether it is a party to the underlying legal action, is a ‘suit’ against the Tribe, triggering tribal sovereign immunity.”<sup>21</sup>

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<sup>17</sup> 675 F.3d 1100, 1103 (8th Cir. 2012).

<sup>18</sup> *Id.* at 1105.

<sup>19</sup> *Id.* at 1104 (quoting *Am. Indian Agric. Credit Consortium v. Standing Rock Sioux Tribe*, 780 F.2d 1374, 1378 (8th Cir. 1985)).

<sup>20</sup> 741 F.3d 1155, 1160 (10th Cir. 2014).

<sup>21</sup> *Id.*; cf. *Russell v. Jones*, 49 F.4th 507, 517-18 (5th Cir. 2022) (recognizing that *Alltel* and *Bonnet* “applied” tribal sovereign immunity “to bar third-party subpoenas[]”); *St. Vincent*

While *Alltel* and *Bonnet* concern subpoenas issued in civil litigation, the Ninth Circuit has applied the same reasoning to subpoenas issued in criminal proceedings and to search warrants. In *United States v. James*, James was indicted under the Major Crimes Act (“MCA”) for aggravated sexual assault.<sup>22</sup> In preparing his defense, James obtained from the United States District Court for the Western District of Washington a subpoena for records of the victim’s alleged substance misuse held by the Quinault Indian Nation (“Quinault”) Department of Social and Health Services.<sup>23</sup> James argued that Quinault’s sovereign immunity did not protect it from complying with a valid subpoena.<sup>24</sup> Alternatively, he argued that Quinault had waived its sovereign immunity to the subpoena because Quinault had voluntarily provided records related to the victim held by its Housing Authority to the United States in the same case.<sup>25</sup> The Ninth Circuit rejected both arguments.

As a threshold matter, the Ninth Circuit affirmed that Quinault possessed sovereign immunity, absent an express and unequivocal waiver by Quinault or abrogation by

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*Med. Grp., Inc. v. U.S. Dep’t of Just.*, 71 F.4th 1073, 1075 n.2 (7th Cir. 2023) (noting *Alltel*’s holding “that third-party subpoenas to Indian tribes are barred by sovereign immunity[.]”).

<sup>22</sup> 980 F.2d 1314, 1316 (9th Cir. 1992); *see* 18 U.S.C. § 1153(a).

<sup>23</sup> *James*, 980 F.2d at 1319.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

Congress.<sup>26</sup> The court then held that in enacting the MCA, Congress had not abrogated Tribal Nations’ sovereign immunity, so Quinault possessed sovereign “immunity at the time the subpoena was served,” absent a waiver.<sup>27</sup> As discussed *infra* Section IV, the Ninth Circuit also held that Quinault had not waived its sovereign immunity for records held by the Department of Social and Health Services by voluntarily providing the United States records held by its Housing Authority.<sup>28</sup>

The Ninth Circuit has expanded *James* to also apply to state court-issued search warrants.<sup>29</sup> In *Bishop Paiute Tribe v. County of Inyo*, the Inyo County District Attorney’s and Sheriff’s Offices obtained and executed a search warrant against the Bishop Paiute Tribe (“Bishop Paiute”) and a Tribe-owned business as part of a welfare fraud

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<sup>26</sup> *Id.* (citing *Burlington N. R.R. Co. v. Blackfeet Tribe*, 924 F.2d 899, 901 (9th Cir. 1991)).

<sup>27</sup> *Id.*

<sup>28</sup> *Id.* at 1320.

<sup>29</sup> That *James* and *Bishop Paiute* involved Tribal Nations in the Lower 48 with reservations is irrelevant to addressing these issues in Alaska. The Supreme Court has “‘decline[d] to draw any distinction’ that would ‘confine immunity to reservations[.]’” *Bay Mills*, 572 U.S. at 800 (quoting *Kiowa Tribe*, 523 U.S. at 758) (brackets omitted). Moreover, the Alaska Supreme Court has never considered reservation, trust land, or Indian County status in affirming Tribal sovereign immunity. *See Runyon*, 84 P.3d at 439 (Although Alaska contains very little “Indian county, its Native villages ‘retain those fundamental attributes of sovereignty which have not been divested by Congress’” including “‘the common-law immunity from suit traditionally enjoyed by sovereign power[.]’” (citations, ellipses omitted)); *cf. McCrary v. Ivanof Bay Vill.*, 265 P.3d 337, 342 (Alaska 2011) (“Because Ivanof Bay is a federally recognized tribe, it is entitled to sovereign immunity.”). Thus, Tribal Nations’ sovereign immunity protects them from state court-issued search warrants regardless of where the search and seizure occurs. Any distinction in this case is further irrelevant because Metlakatla is the only Tribal Nation in Alaska with a reservation (*i.e.*, the Annette Island Reserve).

investigation, and seized the payroll and employment records of Tribal members.<sup>30</sup> Bishop Paiute brought a 42 U.S.C. § 1983 action against Inyo County, asserting that the search and seizure violated its sovereign immunity.<sup>31</sup>

Before the Ninth Circuit, Inyo County argued that the execution of the search warrant did not offend Bishop Paiute’s sovereignty.<sup>32</sup> The Ninth Circuit disagreed. The court began its analysis by observing that “tribal sovereign immunity [i]s a considerable shield against intrusions of state law into Indian country,”<sup>33</sup> and stated that in determining whether Tribal Nations are immune from state court-issued search warrants, the focus is “on the status of Indian tribes as sovereigns[.]”<sup>34</sup> The Ninth Circuit held that its decision “in *James* [wa]s directly relevant[.]”<sup>35</sup> The Ninth Circuit “reaffirm[ed] *James*” and held that Bishop Paiute’s sovereign immunity “bar[red] execution of the warrant.”<sup>36</sup> In holding that a state court could not compel a Tribal Nation to produce documents, the court gave “considerable weight” to *James*’s holding that federal courts could not either.<sup>37</sup>

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<sup>30</sup> 291 F.3d at 554-55.

<sup>31</sup> *Id.* at 555.

<sup>32</sup> *Id.* at 557-58.

<sup>33</sup> *Id.* at 556 (citing *Williams v. Lee*, 358 U.S. 217 (1959); *McClanahan v. Ariz. State Tax Comm’n*, 411 U.S. 164 (1973)).

<sup>34</sup> *Id.* at 558.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.* at 560 (footnote omitted).

<sup>37</sup> *Id.* at 558.

The Ninth Circuit also held “that there was no jurisdictional grant authorizing county officers to search and seize tribal property as part of a criminal prosecution of an individual Indian.”<sup>38</sup> Accordingly, Inyo County officials “acted beyond their authority when they executed the search warrant against the Tribe and in excess of their jurisdiction.”<sup>39</sup>

While *Bishop Paiute* was later vacated on other grounds, the Ninth Circuit’s reasoning in the case remains instructive. On petition for certiorari, the Supreme Court held that Bishop Paiute did not have standing to bring its § 1983 claim because it sought to vindicate a sovereign right (its sovereign immunity), not a “private right[]” as contemplated by § 1983.<sup>40</sup> The Court did not question Bishop Paiute’s claims that its sovereign immunity had been violated. Indeed, the Court noted that § 1983 was not intended “to advance a sovereign’s *prerogative* to withhold evidence relevant to a criminal investigation.”<sup>41</sup> The Court remanded the case to determine whether Bishop Paiute’s claims could proceed under

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<sup>38</sup> *Id.* at 568; *cf. Sycuan Band of Mission Indians v. Roache*, 788 F. Supp. 1498, 1508 (S.D. Cal. 1992) (holding that search warrants executed against Tribal Nation “were invalid because the state court did not have the authority to issue the warrants[]”).

<sup>39</sup> *Bishop Paiute*, 291 F.3d at 567; *cf. Soboba Band of Luiseño Indians v. Cnty. of Riverside*, No. EDCV 17-01141 JGB (SPx), 2018 WL 6010328, at \*7 (C.D. Cal. June 8, 2018) (quoting *Ute Indian Tribe of Uintah & Ouray Rsrv. v. Lawrence*, 875 F.3d 539, 545-46 (10th Cir. 2017)) (“[W]hile tribal sovereign immunity can be waived, . . . ‘the parties cannot confer subject-matter jurisdiction on the state by consent.’” (brackets, quotation marks omitted)).

<sup>40</sup> *Bishop Paiute III*, 538 U.S. at 712.

<sup>41</sup> *Id.* (emphasis added).

a different cause of action.<sup>42</sup>

Notwithstanding the Supreme Court's vacatur, multiple courts have continued to rely on the Ninth Circuit's reasoning in *Bishop Paiute*, as well as *James*.<sup>43</sup> For example, in *RE Sources for Sustainable Communities v. Pacific International Terminals, Inc.*, the Western Washington District Court held that it was "bound by *James* and the reasoning of *Bishop Paiute*, which hold that tribal immunity protects a tribe from the enforcement of a third-party subpoena absent a waiver of that immunity."<sup>44</sup> The district court quashed a third-party subpoena issued against an official of the Lummi Nation, holding that both the Nation and its official were "protected by the tribe's sovereign immunity."<sup>45</sup>

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<sup>42</sup> *Id.*

<sup>43</sup> See, e.g., *NGV Gaming, Ltd. v. Upstream Point Molate, LLC*, No. C-04-3966 SC (JCS), 2009 WL 4258550, at \*4 (N.D. Cal. Nov. 24, 2009) (citing *James*, 980 F.2d at 1314; *Bishop Paiute*, 275 F.3d at 904) ("This immunity has also been found to protect tribes and their officers from legal process such as a subpoena or a search warrant."); *Quair v. Bega*, 388 F. Supp. 2d 1145, 1148 (E.D. Cal. 2005) (relying on *James* and *Bishop Paiute*, the court held "that the Tribe was possessed of tribal immunity at the time the subject subpoenas were served[]"); *Davis v. Senibaldi*, NNHCV116019864S, 2011 WL 7049496, at \*5 (Conn. Super. Ct. Dec. 28, 2011) (relying on *James* and *Bishop Paiute* to quash subpoenas issued against Tribal officials); see also *Jackson v. Barnes*, 749 F.3d 755, 764 (9th Cir. 2014) (relying on *Bishop Paiute* to find that sheriff's department was subject to suite under § 1983).

<sup>44</sup> No. C11-2076-JCC, 2013 WL 12330334, at \*3 (W.D. Wash. Jan 2, 2013).

<sup>45</sup> *Id.* at \*4; see also *United States v. Wahtomy*, No. 08-96-E-BLW, 2008 WL 4690519, at \*1 (D. Idaho Oct. 22, 2008) (citing *James*, 980 F.3d at 1314) ("The Tribes have sovereign immunity from suit, and this extends to protect them from complying with subpoenas in criminal cases.").

### III. Public Law 280 Does Not Grant States Jurisdiction to Issue or Execute Search Warrants Against Tribal Nations, Nor Does it Abrogate Tribal Sovereign Immunity

Tribal Nations' sovereign immunity is subject to control by Congress.<sup>46</sup> Congress can diminish or abrogate Tribal Nations' sovereign immunity, but it must unequivocally express its intent to do so.<sup>47</sup> "Public Law 280 grants states 'jurisdiction over offenses' committed by or against Indians and 'civil causes of action' to which Indians are parties[.]"<sup>48</sup> Alaska is a Public Law 280 jurisdiction.<sup>49</sup> While Public Law 280 grants states "jurisdiction over all civil and criminal matters arising in Indian country[.]"<sup>50</sup> it does not grant states jurisdiction over Tribal Nations or to issue or execute search warrants against them, nor does it abrogate Tribal Nations' sovereign immunity.<sup>51</sup> The Ninth Circuit addressed these precise issues in *Bishop Paiute*.

In *Bishop Paiute*, Inyo County argued that "Public Law 280 must be read to grant

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<sup>46</sup> *Ito*, 547 P.3d at 1010 (citing *Bay Mills*, 572 U.S. at 788).

<sup>47</sup> *Id.* (quoting *Bay Mills*, 572 U.S. at 790).

<sup>48</sup> *Cohen's Handbook of Federal Indian Law*, § 7.04[3][b][i], at 459 (Nell Jessup Newton & Kevin K. Washburn eds., 2024).

<sup>49</sup> *See* Pub. L. No. 85-615, 67 Stat. 589 (1958) (amending 18 U.S.C. § 1162(a) and 28 U.S.C. § 1360(a) to include Alaska).

<sup>50</sup> *John*, 982 P.2d at 745 (citation omitted).

<sup>51</sup> *See* David S. Case & David A. Voluck, *Alaska Natives and American Law* 48, 413-14 (3d ed. 2012) (noting that the Alaska Supreme Court has held that Public Law 280 does not waive Tribal sovereign immunity and does not grant the State jurisdiction over Tribal Nations).

jurisdiction to the states to execute a search warrant over the Tribe.”<sup>52</sup> The Ninth Circuit rejected this reading. The court observed that both it and the Supreme Court had previously “interpreted Public Law 280 to extend jurisdiction to individual Indians and *not to Indian tribes*.”<sup>53</sup> In *Bryan v. Itasca County*, for example, the Supreme Court had held that Public Law 280 “itself refutes such an inference: there is notably absent any conferral of state jurisdiction over the tribes themselves[.]”<sup>54</sup> And in *California ex rel. California Department of Fish & Game v. Quechan Tribe of Indians*, the Ninth Circuit held that “[n]either the express terms of [Public Law 280], nor the Congressional history of the statute, reveal any intention by Congress for it to serve as a waiver of a Tribe’s sovereign immunity.”<sup>55</sup> Accordingly, in *Bishop Paiute*, the Ninth Circuit reaffirmed that Public Law 280 “nether waived the sovereignty of the tribes, nor granted state jurisdiction over Indian tribes.”<sup>56</sup> Thus, Bishop Paiute’s sovereign immunity barred the execution of the search warrant regardless of Public Law 280.<sup>57</sup>

The Alaska Supreme Court has also held that Public Law 280 does not abrogate

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<sup>52</sup> 291 F.3d at 557 (citations omitted).

<sup>53</sup> *Id.* (citations omitted, emphasis added).

<sup>54</sup> 426 U.S. 373, 388-89 (1976).

<sup>55</sup> 595 F.2d 1153, 1156 (9th Cir. 1979) (footnotes omitted); *see also Three Affiliated Tribes of Fort Berthold Rsr. v. World Eng’g*, 476 U.S. 877, 892 (1986) (“We have never read Pub.L. 280 to constitute a waiver of tribal sovereign immunity[.]”).

<sup>56</sup> 291 F.3d at 557.

<sup>57</sup> *Id.* at 560.

Tribal Nations’ sovereign immunity. In *Atkinson v. Haldane*, the Alaska Supreme Court found that Public Law 280 did not contain “an express congressional waiver of immunity[.]”<sup>58</sup> Accordingly, the Court held that Public Law 280 “did not waive the sovereign immunity of the Indian tribes and thus the Metlakatla Indian Community has sovereign immunity with respect to the subject wrongful death actions.”<sup>59</sup> *Bishop Paiute* and *Atkinson* affirm that Public Law 280 does not grant states jurisdiction to issue or execute search warrants against Tribal Nations, nor does it abrogate Tribal Nations’ sovereign immunity from state court-issued search warrants.

#### **IV. Tribal Nations May Waive their Sovereign Immunity by Consenting to Searches or Voluntarily Providing Documents, but Such Waivers Must be Construed Narrowly**

Tribal Nations may waive their sovereign immunity.<sup>60</sup> Any such waiver “must be unequivocally expressed; such waiver may not be implied.”<sup>61</sup> The Alaska Supreme Court has observed that while Tribal Nations may waive their “immunity for transparency and accountability reasons[.]” the decision to do so must be left “up to the tribes.”<sup>62</sup> Any purported waiver of sovereign immunity must be made in accordance with Tribal law and

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<sup>58</sup> 569 P.2d at 167.

<sup>59</sup> *Id.* (footnote omitted).

<sup>60</sup> *Ito*, 547 P.3d at 1010 (citations omitted).

<sup>61</sup> *Id.* at 1026 (citations omitted).

<sup>62</sup> *Douglas*, 403 P.3d at 1179.

by an officer or body of the Tribal Nation with authority to waive sovereign immunity.<sup>63</sup> Waivers of Tribal sovereign immunity must also be construed narrowly.<sup>64</sup> If a Tribal Nation waives its sovereign immunity by consenting to a search or voluntarily providing records, that waiver applies only to the Tribal agency or department that the Tribe allowed to be searched or provided records from and cannot be imputed to other agencies or departments. The Ninth Circuit addressed this precise issue in *James*.

In *James*, the Ninth Circuit held that Quinault possessed sovereign “immunity at the time the subpoena was served,” absent a waiver.<sup>65</sup> James argued that Quinault’s voluntary provision of the victim’s Housing Authority records to the United States waived Quinault’s sovereign immunity to the subpoena for the victim’s Department of Social and Health Services records.<sup>66</sup> The Ninth Circuit disagreed. The court held that Quinault had

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<sup>63</sup> See, e.g., *Memphis Biofuels, LLC v. Chickasaw Nation Indus., Inc.*, 585 F.3d 917, 922 (6th Cir. 2009) (purported waiver was not properly approved by governing body, thus Tribal corporation’s “sovereign immunity remain[ed] intact[.]”); *Sanderline v. Seminole Tribe*, 243 F.3d 1282, 1288 (11th Cir. 2001) (“[Tribal official] did not have actual or apparent authority to waive voluntarily the Tribe’s sovereign immunity[.]”); see also *Vill. of Hotvela Traditional Elders v. Indian Health Servs.*, 1 F. Supp. 2d 1022, 1027 (D. Ariz. 1997).

<sup>64</sup> See *Grand Canyon Skywalk Dev., LLC v. Haulapai Indian Tribe of Ariz.*, 966 F. Supp. 2d 876, 882-83 (D. Ariz. 2013) (quoting *United States v. Nordic Vill., Inc.*, 503 U.S. 30, 34 (1992)) (“Waivers of sovereign immunity must be ‘strictly construed’ and not enlarged beyond what the express language requires.” (citation omitted)); cf. *Douglas*, 403 P.3d at 1179 (quoting *Runyon*, 84 P.3d at 440) (“But the ‘federal policies of self determination, economic development, and cultural autonomy’ are better served by leaving these decisions up to the tribes.”).

<sup>65</sup> 980 F.2d at 1319.

<sup>66</sup> *Id.*

“expressly waived its immunity as to relevant documents in the possession of the Housing Authority by voluntarily providing the Government with documents relevant to the case[.]” but this “did not indicate an intent to release all documents in the possession of the different tribal agencies.”<sup>67</sup> To be sure, the Ninth Circuit stated that Quinault “cannot selectively provide documents and then hide behind a claim of sovereign immunity when the defense requests different documents from the same agency.”<sup>68</sup> But the court held that Quinault had different interests in protecting Department of Social Services records than in protecting Housing Authority records, so one department’s waiver could not be imputed to another.<sup>69</sup> While *James* concerned a third-party subpoena, *Bishop Paiute* makes clear that *James*’s reasoning applies equally to search warrants.<sup>70</sup>

## CONCLUSION

Tribal sovereign immunity protects Tribal Nations from state court-issued search warrants, absent them expressly and unequivocally waiving their immunity or Congress abrogating it. Public Law 280 does not grant states jurisdiction to issue or execute search warrants against Tribal Nations, nor does it abrogate Tribal Nations’ sovereign immunity to state court-issued search warrants. While Tribal Nations can waive their sovereign

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<sup>67</sup> *Id.* at 1320.

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> *Bishop Paiute*, 275 F.3d at 902 (“The ruling in *James* is directly relevant to our review of this case.”).

immunity by consenting to a search or voluntarily providing records, any waiver must comply with Tribal law, be made by a Tribal official or body with authority to waive immunity, and be narrowly construed.

RESPECTFULLY SUBMITTED this 20th day of February, 2026.

/s/ Wesley James Furlong

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